

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 654 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

CHANDRASHANKAR KUBERBHAI BHATT

Versus

VALJIBHAI SHANKERBHAI PATEL

Appearance:

1. Criminal Appeal No. 654 of 1990
MR MANISH UPADHYAY for MR PRANAV G DESAI for Appellant No. 1
(MR GN DESAI) for Appellant No. 1
MR HD VASAVADA for Respondent Nos. 1-2
PUBLIC PROSECUTOR for Respondent No. 3

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 08/08/2003

ORAL JUDGEMENT

1. This appeal has been preferred by the original
complainant against the judgement and order dated
16-10-1986 passed by the Court of Additional Sessions

Judge, Vadodara in Criminal Appeal No.47 of 1985 allowing the appeal and acquitting the accused i.e. respondent Nos.1 and 2 herein.

2. The appellant is the original complainant. Respondent Nos.1 and 2 are the original accused Nos.1 and 2 in Criminal Case No.6169 of 1982 while respondent No.3 is the State of Gujarat. Hereinafter, for the sake of convenience, the parties shall be referred to by their original description.

3. The accused were charged with offences stated to have been committed under Sections 7 and 16 of The Prevention of Food Adulteration Act, 1954 (hereinafter referred to as 'the Act'). The Court of Judicial Magistrate (F.C.), Vadodara (Municipal Court) held both the accused guilty of the offences charged with and sentenced accused No.1 to rigorous imprisonment for two years with fine of Rs.3,000/=, in default, rigorous imprisonment for three months; while accused No.2 was sentenced with rigorous imprisonment for one year and fine of Rs.2,000/=, in default, rigorous imprisonment for 30 days.

4. The case of the prosecution, in brief, is that the complainant, who is Food Inspector employed by Vadodara Municipal Corporation, visited a grocery shop named Patel Provisions Store, Gorva Bazar, Vadodara on 08-06-1982 at around 9:00 a.m. That accused No.1 is the owner of the shop and accused No.2 is the servant employed by accused No.1 to run the shop. The complainant purchased 600 grms. Besan i.e. Gram Flour after making necessary payment in presence of a pancha and informed accused No.2 that the said purchase was made for the purpose of analysis. That the necessary formalities were observed like dividing the purchased goods into three equal samples and kept in a clean empty dry bottle which were sealed, packed, wrapped and labelled in presence of accused No.2 and the pancha. In short, the necessary formalities prescribed under the Act and Rules were duly observed. One sample was forwarded to the public analyst for analysis and upon receipt of the report of the public analyst, showing adulteration sanction from the Local (Health) Authority was obtained and steps initiated to have the prosecution launched against the accused.

5. When the accused were produced before the Magistrate, the charge at Exh.45 was read out and the accused requested the Magistrate to send another sample to the Central Food Laboratory for analysis. The

Magistrate duly complied with the requirement and upon receipt of the certificate from the Director of the Central Food Laboratory, Pune and after recording the statements of the accused, hearing the parties and after recording the evidence held both the accused to be guilty of the offence charged with.

6. In the appeal filed by the accused the Court of Additional Sessions Judge, Vadodara has held that the offences with which the accused have been charged cannot be stated to have been proved beyond reasonable doubt and hence acquitted both the accused and allowed the appeal. The appellate Court formulated the following issues for its decision :

- (1) Has the prosecution proved beyond reasonable doubt that the complainant purchased 600 grms. Besan on 08-06-1982 from accused No.2 from the shop of accused No.1 and on analysis the said sample was adulterated and was not as per standard prescribed ?
- (2) Has the prosecution proved beyond reasonable doubt that the complainant had kept pancha witness Ranchhodbhai Shanabhai present at the time of collecting sample ? and whether the pancha witness was present at the time of collecting the sample and forwarding the same to the laboratory ?
- (3) Whether the order of the Magistrate rejecting the prayer of the accused to examine the Local (Health) Authority and public analyst as witness was illegal and incorrect ?
- (4) Whether the act of admitting on record documentary evidence at Exhs.68, 69 and 70 directly is correct and legal ?
- (5) Whether sanction to initiate prosecution against the accused is correct and legal?
- (6) Whether the Magistrate has erred in holding the accused to be guilty and punishable for offences under Sections 7 and 16 of The Prevention of Food Adulteration Act, 1954 ?

(7) What order ?

7. The appellate Court has held that the request for examining Local (Health) Authority and the public analyst as witness by the accused was rightly rejected by the trial Court and there was no infirmity in recording the said finding. Similarly, sanction granted by the Local (Health) Authority to launch prosecution against the accused was also rightly held by the trial Court to be correct and legal. However, the appellate Court has held that the prosecution had failed to prove beyond reasonable doubt that the samples collected on 08-06-1982 were adulterated and did not meet the prescribed standard on analysis and further that the prosecution had failed to prove beyond reasonable doubt that the pancha witness had been present at the time when the samples were collected by the complainant and forwarded to the laboratory. Similarly, the appellate Court has held that the act of the trial Court in taking on record documentary evidence Exhs.68, 69 and 70 directly was not correct and was illegal. Thus, according to the appellate Court, the trial Court had erred in convicting the accused for the offences under Sections 7 and 16 of the Act.

8. Heard Mr.Manish Upadhyay for Mr.Pranav G. Desai on behalf of the complainant / appellant. It is submitted that the appellate Court having held that the analysis report of the public analyst and the Central Food Laboratory, Pune were identical when the said reports held that the food samples were adulterated and did not meet the prescribed standard, and in these circumstances, the accused could not have been acquitted. It had come on record that in both the reports lakh dal powder had been mixed in the Gram Flour and there was nothing on record to show to the contrary. That the appellate Court having held that the sanction was legal and valid and it was not necessary to cross-examine the Local (Health) Authority or the public analyst, the appellate Court could not have thereafter acquitted the accused on various technical grounds.

9. The record and proceedings have been requisitioned and are placed for perusal of the Court and have been taken into consideration.

10. Section 13 of the Act relates to the report of public analyst and as prescribed in sub-section (1) of Section 13 of the Act, the public analyst is required to deliver a report to the Local (Health) Authority in the prescribed form the result of the analysis of any article of food submitted to him for analysis.

Sub-section (2) of Section 13 of the Act stipulates that upon receipt of report of the public analyst the Local (Health) Authority shall, after the institution of the prosecution supply a copy of the report of the result of the analysis to such person or persons who may be accused and thereafter such person or persons have a right to apply to the Court within a period of ten days from the date of receipt of the copy of the report to have the another sample of the seized article analysed by the Central Food Laboratory.

Section 13(2-B) of the Act requires that it is mandatory for the Court to first ascertain that the mark and seal as provided in Section 11(1)(b) of the Act are intact and the signature or thumb impression is not tampered with, and thereafter despatch one part of the sample under its own seal to the Director of the Central Food Laboratory. In the present case the appellate Court has found from the evidence on record that as the Magistrate who had forwarded one part of the sample under Section 13(2-B) of the Act to the Central Food Laboratory, was not the Magistrate who tried the accused, it was incumbent upon the Court of the Magistrate to place on record evidence that the prescribed requisite formalities had duly been observed and mandatory requirements complied with. That as the record did not show such compliance, according to the appellate Court, it was not possible to accept and rely upon the report of analysis tendered by the Central Food Laboratory.

11. Under Section 13(2) of the Act an important right has been conferred on the accused, who is facing trial for adulteration under the provisions of the Act, to have the sample analysed by the Central Food Laboratory. This right is not an empty formality. It is apparent that the same is for the purpose of ascertaining / confirming the result of the analysis carried out by the public analyst as reflected in the report of the public analyst. This would ensure that the report of the public analyst, is not erroneous and/or not tendered on any extraneous reason. In light of this important statutory right available to an accused, it is settled law that the formalities and the procedure prescribed in Section 13(2-B) of the Act cannot be treated to be idle formalities and are mandatory requirements which have to be complied with in letter and in spirit. In the present case the appellate Court has found that the mandatory requirements of Section 13(2-B) of the Act have not been shown to have been satisfied. The learned advocate on behalf of the appellant has not been able to dislodge

aforesaid finding of fact.

12. The appellate Court has further held that documentary evidence at Exhs.68, 69 and 70 have been taken on record and admitted as evidence without according any opportunity to the accused and thus due to violation of principles of natural justice, according to the appellate Court, the prosecution cannot succeed. The appellate Court has found that on 09-05-1985 the trial Court concluded hearing of the matter after recording evidence and hearing the advocates of both the sides. The matter was ordered to be kept for judgement on 27-05-1985. In the meantime, the record reveals that on 16-05-1985 while dictating the order the trial Court has directed the Nazir of the Court to place Exh.68, which is Criminal 'H' Register, Exh.69, which is Registered Acknowledgment Due showing receipt of the sample by the Central Food Laboratory and Exh.70, which is receipt issued by the Postal Authority for the parcel sent to the Central Food Laboratory on record. Thus, it is apparent that the said documents have come on record without being admitted and accepted as required in law i.e. without following proper procedure prescribed in law. It is in these circumstances that the appellate Court has rightly held that the trial Court has failed to comply with the principles of natural justice as well as establish that the sample had been forwarded to the Central Food Laboratory as prescribed in law. The facts stated hereinbefore and as are available on record are so eloquent that, in absence of any evidence to the contrary, it is not possible to find any infirmity with the reasoning and finding of the trial Court. What is most vital to the prosecution is the stage at which the said documents have been admitted on record by the trial Court i.e. when the matter was reserved for dictation of the judgement and order. Therefore, on this count also, it is not possible to accept the submission of the learned advocate on behalf of the complainant that it was a mere procedural irregularity which should not come in way of the prosecution.

13. The complainant has stated that the procedure statutorily prescribed under Section 11 of the Act of collecting samples and after observing the requisite formalities forwarding the same to the public analyst were duly observed in presence of pancha witness Ranchhodbhai Shanabhai. However, when the deposition of the said pancha witness is considered, it is apparent that the said witness had not supported the prosecution in regard to any material point. In fact, the pancha witness has categorically stated in his deposition that

he was not present when the sample was purchased / collected and packed, sealed, etc. but had been summoned only when the samples etc. had to be signed. Therefore, the absence of pancha witness has been considered as a relevant factor by the appellate Court, more particularly because the trial Court has failed to declare the said witness as a hostile witness. In fact, the deposition of the pancha witness specifically demolishes the deposition of the complainant and in such circumstances the appellate Court has rightly held that the trial Court had committed an error in not discarding the evidence of pancha witness and accepting the evidence of the complainant. The learned counsel for the complainant contended that it was not necessary for the complainant to keep a pancha present at the time of collecting sample and carrying out the necessary formalities, and hence, in the circumstances, there was no error in the order of the trial Court when the deposition of the pancha witness was not given any credence. The submission on behalf of the complainant would have carried weight provided the pancha witness had not been summoned / kept present at all. Once the pancha witness had been summoned, it is necessary that the said witness, who is a prosecution witness, supports the case of the prosecution to the hilt. In the present case, admittedly, the pancha witness has taken an absolutely contradictory stand to the case of the complainant and in these circumstances the appellate Court was justified in holding that the prosecution had failed to establish the case against the accused as required in law.

14. In light of what is stated hereinbefore there is no infirmity in the impugned order dated 16-10-1986 and it is not possible to accept the case of the complainant / appellant. The order dated 16-10-1986 in Criminal Appeal No.47 of 1985 setting aside the judgement of trial Court and acquitting the accused is confirmed. In the result, the appeal fails and is dismissed.

Sd/-

[D.A.MEHTA, J]

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'Bhavesh'